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TAGS: [PTER](#) [PREL](#) [SP](#)

SUBJECT: DOJ COUNTERTERRORISM MEETINGS WITH SPANISH
AUTHORITIES

REF: A) MADRID 1584 B) MADRID 1989

Classified By: Political Counselor Kathy Fitzpatrick; reason 1.4 (B)

11. (C) Summary. A USDOJ/FBI team led by DOJ Trial Attorneys Donald Ashley and Greg Sofer visited Madrid May 16-20 for meetings with Spanish prosecutors and judicial officials to discuss counterterrorism cooperation and to participate in the first official meeting of the U.S.-Spain Bilateral Counterterrorism Experts Working Group. The DOJ team raised concerns regarding a pending Spanish Mutual Legal Assistance (MLAT) request for access to terrorist suspect Ramzi Binalshibh, whom the prosecution would like to depose as a witness in the Barakat Yarkas trial (ref A). The lead prosecutor in the Barakat Yarkas case said that the Binalshibh MLAT was necessary in order for the prosecution to introduce relevant testimony from the U.S. 9/11 Commission report. The prosecutor assured USG participants that the GOS understood the difficulties in making Binalshibh available and insisted that the GOS would not blame the USG for not allowing access to Binalshibh should the prosecutors fail to convict Barakat Yarkas. Separately, the two sides exchanged views on possible mechanisms for the exchange of sensitive judicial information and discussed a terrorism financing case suggested by the Spanish authorities for joint investigation and prosecution. The next meeting of the Working Group will take place in September or October in Washington. End Summary.

//BARAKAT YARKAS MLAT//

12. (C) The DOJ team and Mission personnel attended a session of the ongoing Barakat Yarkas trial and met separately with the lead judge and the prosecutor to discuss the case. In their meetings with lead prosecutor Pedro Rubira, Ashley and Sofer expressed concern regarding reports that prosecutors in the Barakat Yarkas case plan to submit an MLAT request to the USG for access to terrorist suspect Ramzi Binalshibh. Ashley explained the problems encountered by the USG regarding similar requests by other countries and emphasized that the USG did not want to be portrayed as having impeded the conviction of Barakat Yarkas, particularly since the GOS had been aware throughout the investigation that Binalshibh would not be available to contribute to their case.

13. (C) Rubira assured the DOJ team that Spanish prosecutors were not setting the stage to blame the USG should they fail to convict Barakat Yarkas. He said that the GOS case against Barakat Yarkas did not hinge on Binalshibh's testimony and that the MLAT would be more a matter of procedure than substance. Rubira explained that the MLAT request (which has not yet been submitted to the Embassy) came at the recommendation of the lead magistrate in the Barakat Yarkas case as a possible way for the prosecution to enter into evidence the U.S. 9/11 Commission Report's account of the July 2001 meeting in Spain between Binalshibh and Mohamed Atta. Per Spanish trial guidelines, the court must request the presence of witnesses whose written accounts are introduced into the case. Rubira suggested that it would be sufficient for his purposes for the MLAT to be submitted, regardless of whether the USG chose to respond before the trial ended. The conclusion of the trial would obviate the need for Binalshibh's testimony or for a USG response to the MLAT. After further discussion of this issue, the DOJ team and Spanish prosecutors agreed to share information on potentially sensitive MLAT requests prior to formally submitting them.

//MEETING OF BILATERAL COUNTERTERRORISM EXPERTS GROUP//

14. (C) The DOJ/FBI team, accompanied by Legat, the Consul General, and poloff, met on May 18 with GOS Chief Prosecutor Eduardo Fungairino, Elvira Tejeda of the Attorney General's office, and Deputy Chief Prosecutor Jesus Santos. Pedro Rubira also attended the meeting. It was the first official meeting of the "U.S.-Spain Bilateral Counterterrorism Experts Working Group" launched by Attorney General Gonzales and Spanish Justice Minister Aguilar during A/G Gonzales' March 11 visit to Madrid. The meeting began with a review of the bilateral exchange of information regarding each country's regulations on the protection of sensitive investigative information used for judicial purposes. As in previous discussions on this issue, Spanish participants acknowledged that there was no mechanism in their system for safeguarding investigative data submitted as evidence in a trial; all such

information could eventually emerge in the public domain.

15. (C) Ashley reviewed the mechanisms available to U.S. judges to permit them to share information with both the prosecution and the defense, without revealing classified information. Ashley noted that U.S. prosecutors had the benefit of weighing the value of classified evidence in the pre-trial phase and could determine what information to include in the trial and what to leave out in order to protect sources and methods. Spanish prosecutors have no such advantage since the investigation is led by a magistrate who must automatically "judicialize" all available evidence, in effect making even the most sensitive information available to the public. Ashley said that this factor complicated the USG's ability to assist Spanish prosecutors.

16. (C) Spanish participants suggested that the USG provide sanitized versions of intelligence information as investigative leads. In the Spanish system, USG investigative leads would not have judicial value, but they would give Spanish law enforcement an opportunity to develop evidence that could be used in court. Sofer probed on this issue, asking whether the inclusion of even sanitized USG intelligence information could trigger a Spanish judge to demand the underlying information. Sofer noted that, in a U.S. court, heavily sanitized intelligence information would have little value as evidence. Jesus Santos acknowledged that the same was true in the Spanish system and said that a Spanish judge could insist on full disclosure on the background any information submitted as evidence in a trial. Santos said that any potentially useful intelligence information should be passed to Spanish law enforcement agencies rather than directly to prosecutors. Ashley pointed out that the USG already provided a substantial amount of investigative information through law enforcement channels. Further discussion on this point did not yield mechanisms that represented an improvement over the existing law-enforcement-to-law-enforcement channels.

//JOINT TERRORISM FINANCE INVESTIGATION//

17. (C) Chief Prosecutor Fungairino said Spanish authorities wholeheartedly agreed with the recent suggestion by DOJ to Spanish prosecutors to conduct a joint terrorism financing investigation/prosecution in order to test bilateral judicial cooperation mechanisms. Jesus Santos shared with meeting participants details of a newly-opened case the Spanish side proposed as the subject of this first test run. The main target of the investigation is the Islamic Cultural Center, a prominent Islamic institution located in Madrid and affiliated with the M-30 Mosque, one of the largest Mosques in Europe. According to the information provided by Santos, Spanish authorities believe that several million dollars that flowed through three accounts handled by the Islamic Cultural Center between 1998 and 2003 may have been diverted to persons suspected of supporting international jihadist activities. Police believe the source of the payments, the "Muslim World League" based in Saudi Arabia, may have a record of supporting extremist groups. Fungairino proposed initiating a joint investigation on this case immediately.

18. (C) Ashley thanked the Spanish delegation for having produced a possible case, but said the USG would have to review the information to see whether there was a basis for judicial action in the U.S. as well as in Spain. The USG was fully prepared to provide investigative support, but ideally the DOJ team wanted a case that could be tried in both countries as well. FBI participants in the meeting agreed and said they would immediately begin investigating the information provided by Santos and would provide feedback as soon as possible. If the FBI investigation produces grounds for legal action against the suspects in the Islamic Cultural Center case, DOJ and the Spanish authorities can coordinate judicial strategies and bring the case to trial in each country. If there is no possibility of bringing charges in the U.S. in this case, the FBI will continue providing law enforcement support while searching for another case that could lead to indictments in both countries.

19. (U) The next meeting of the Working Group will take place in Washington in September or October 2005.

MANZANARES